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## 2005 Decisions

## Opinions of the United States Court of Appeals for the Third Circuit

7-19-2005

# Chen v. Atty Gen USA

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 04-2328

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CHING CHUN CHEN,  
Petitioner

v.

\*Attorney General of the United States,  
Respondent

\*(Pursuant to F.R.A.P. 43(c))

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ON REVIEW FROM AN ORDER OF THE  
BOARD OF IMMIGRATION APPEALS  
DATED APRIL 15, 2004  
(BIA No. A77-354-019)

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Submitted Under Third Circuit L.A.R. 34.1(a)  
July 15, 2005  
Before: SLOVITER, McKEE and WEIS, Circuit Judges.

(Filed: July 19, 2005)

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OPINION

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WEIS, Circuit Judge.

Petitioner, a Chinese national, applied for asylum, withholding of removal  
and protection under the Convention Against Torture. At a hearing before an

Immigration Judge (IJ), he discussed his assistance to the Falun Gong and his alleged persecution. The IJ found the testimony lacking in credibility.

Petitioner appealed to the BIA, but when he failed to timely file a brief, the Board dismissed the appeal. Petitioner asked for reopening based on ineffective assistance of counsel. The BIA denied the motion citing Matter of Lozada, 19 I&N Dec. 637 (BIA 1988).

We have examined the petitioner's contentions and find that they are lacking in merit. In Lu v. Ashcroft, 259 F.3d 127 (3d Cir. 2001), we reviewed the Lozada requirements for establishing ineffective assistance of counsel and found the standards to be reasonable.

Petitioner has failed to meet the burden established in Lu. Accordingly, the Petition for Review will be denied.